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ABSTRACT

This report contains information on the constitutional decision to prevent and eliminate racial and ethnic segregation in the State of California. The implications of the California Supreme Court decision on the constitutional duty of schools to eliminate segregated education are presented, along with the State Board of Education declaration of policy regarding de facto segregation. Six characteristics resulting from the efforts of the Equal Educational Opportunities Commission to assist the State Board to implement the policy are listed. Among them are that academic achievement of all ethnic groups will meet or exceed accepted national norms, that self concept and attitudes toward school and learning will be equally positive among all ethnic groups, that status roles and participation of pupils, school staff, and parents in the life of the school will be comparable among all racial and ethnic groups, and that school staffs will be representative of all racial and ethnic groups. Listed among the conclusions are that integration schools and integrated education programs are essential elements of quality education, that integration cannot be achieved without desegregation, that the process of achieving integrated education is not quick, easy or painless, and that further delay in the development of affirmative steps will lead to additional problems. (Author/AM)

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EQUAL EDUCATIONAL OPPORTUNITIES COMMISSION

RECOMMENDATIONS TO IMPLEMENT STATE BOARD OF EDUCATION POLICY
REGARDING RACIAL/ETHNIC CONCENTRATIONS IN SCHOOLS

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I. Implications of California Supreme Court Decision on Proposition 21. The action by the California State Supreme Court, in Santa Barbara School District vs. Superior Court, has opened the way for the State Board to re-assert its leadership in eliminating segregated education. The decision reaffirmed the constitutional duty of school districts to prevent and eliminate racial and ethnic segregation. With the decision that school districts have the primary constitutional responsibility (through the repeal of Education Code Sections 5002-3 and Sections 14020-21) to prevent and eliminate racial segregation, the Commission believes the State Board of Education must give direction and guidance to districts that have a constitutional mandate from the courts.

The decision was stated in Santa Barbara School District vs. Superior Court by the State Supreme Court. In arriving at its decision in that case, the court also made a determination of the constitutionality of Proposition 21, an initiative passed in 1972. A portion of the initiative became Education Code Section 1009.6 and prohibited the assignment of a student to a school on the basis of race, creed or color. The court declared this portion unconstitutional as applied to school districts with either de jure or de facto segregation. Another portion of Proposition 21 repealed the Bagley Act (Education Code Sections 5002-3) and Title 5 regulations (Sections 14020-21, Administrative Code.) The repeal of this portion was upheld as "an expression of the voters' preference," by referendum of a statute. The court noted that the constitutionality of the repealed statute was not in question, however.

II. State Board of Education Declaration of Policy Regarding Defacto Segregation. The Commission believes that the concepts of the policy position adopted by the State Board of Education in 1962 provide a sound basis for taking prudent steps now to provide direction to school districts to achieve quality education for all children of California. The thirteen-year-old policy states¹:

"In its historic decision of May 17, 1954, the Supreme Court of the United States declared that segregation of school children on account of race or color, even where physical facilities and other tangible factors are equal, inevitably results in unlawful discrimination. In California, by law and custom, we have historically operated on the democratic principle of equality of educational opportunity for all children, without regard to race or color, and for this reason it was easy for us to accept the underlying hypothesis of that decision and applaud its rendition. We now find, however, that primarily because of patterns of residential segregation, some of our schools are becoming racially segregated in fact, and that this challenge to equality of educational opportunity must be met with the full thrust of our legal authority and moral leadership.

"We fully realize that there are many social and economic forces at play over which we have no control, which tend to facilitate defacto racial segregation; but in all areas under our control or subject to our influence, the policy of elimination of existing segregation and curbing any tendency toward its growth must be given serious and thoughtful consideration by all persons involved at all levels. Wherever and whenever feasible, preference shall be given to those programs which will tend toward conformity with the views herein expressed."

¹ Adopted by the California State Board of Education on June 14, 1962

III. Efforts of the Equal Educational Opportunities Commission to Assist State Board to Implement Policy. To implement the State Board's policy, this Commission adopted its own policy in 1972 which stated that school integration is a necessary component of quality education, and then described the characteristics of quality integrated education. The 1974 Annual Report describes the characteristics:

1. Academic achievement of all ethnic groups will meet or exceed accepted national norms;
2. Self concept and attitudes toward school and learning will be equally positive among all ethnic groups;
3. An enriched culture for California will be achieved through mutual understanding, respect, and pride in various racial, ethnic and cultural heritage.
4. Pupils of all ethnic groups will perceive each other as peers and friends;
5. Status roles and participation of pupils, school staff, and parents in the life of the school will be comparable among all racial and ethnic groups.
6. School staffs will be representative of all racial and ethnic groups.

IV. Conclusions and Recommendations. Material in the appendix reviews the historical background of actions and events relating to school segregation in California, provides information on the extent of segregation in the state and discusses its harmful educational consequences. Considering this information in the light of the State Board's 1962 policy, the Commission submits its conclusions and recommendations for establishing policies and programs for the prevention and elimination of segregation and thus providing quality education for all children of California.

Conclusions

1. Integrated schools and integrated education programs are essential elements of quality education. Each school district has a Constitutional requirement to prevent and eliminate, insofar as reasonably feasible, the segregation of pupils on account of race and ethnic group. The State Board, above all other public bodies, has the responsibility to provide support and direction to school districts in meeting these Constitutional requirements. The Board should utilize the means within its power to achieve the goal of integrated education. Obstacles that tend to deter or delay the achievement of these goals should be removed.
2. Integration cannot be achieved without desegregation. Affirmative processes must be initiated to move from desegregation to integration. Where racial and ethnic segregation exists, inequality of opportunity also exists, and children suffer harmful consequences. The negative effects on children and the loss of resources to the community and nation cannot be permanently resolved by treating only the symptoms or the victims and not the cause.

3. At this time the State Board does not have policies and regulations sufficient to assist and direct school districts in the prevention and elimination of segregation.
4. This Commission's 1973 and 1974 Annual Reports contained recommendations on criteria and standards to implement the State Board's responsibilities in these matters and could form the basis for establishing new policy and regulations. Those recommendations define goals for quality integrated education; outline the need for the State Board to exercise its regulatory authority; and advise development of qualitative and quantitative standards for school district plans and programs.
5. The process of achieving integrated education is not quick, easy or painless. Some districts in California have made a beginning. Much can be learned from them, especially those which took affirmative steps in the face of considerable opposition.
6. Further delay in the development of prudent, affirmative steps will lead to additional problems and continuing frustration. Delays that involve searching for reports and studies, awaiting further direction from court decisions, or exploring various trends of public opinion should yield now to a firm determination to do what is educationally sound, morally right, and constitutionally required.

Recommendations

From the implication of these conclusions, the Commission recommends the following:

1. The policy making and regulatory authority of the State Board is the most appropriate avenue for providing leadership to school districts. Therefore, the State Board should, at the earliest possible time, initiate a program for providing direction and assistance to school districts in achieving desegregation and integration, and it should set a realistic time schedule for the development, hearing and adoption of a Board policy.
2. The State Board has a useful model of procedure in its adopted resolution and Title 5, Administrative Code provisions on Affirmative Action Employment Programs. The same model would be appropriate to determine policy and procedures in this instance. The proposed policy resolution might contain at least the following elements:
 - a. Findings of Fact - extent of segregation, harmful consequences, legal authority, essential components of integrated education, etc.
 - b. Statement of Policy
 - c. Definitions
 - d. Criteria For the Local Boards to Use in Developing Their Policies and Programs
 - e. Charge to State Department of Education - develop and disseminate guidelines, give technical assistance, conduct racial and ethnic surveys, assess progress statewide, report to State Board, etc.

- f. Charge to County Superintendents of Schools - assistance to districts of limited enrollment size, etc.
- g. Time Table - for developing and accomplishing specific objectives by the Department, the local districts and other agencies as appropriate.

APPENDIX A

Historical and Background Information

1849-1947: The first California constitution provided for a system of common schools, but the schools were initially common to white pupils only. Although segregation was almost uniformly practiced throughout the State prior to 1870, it was in that year the Legislature enacted Section 56 of "The School Law of California" which required separate schools for Indian and Black children. This law was repealed by court action in 1880, and for several years California was free of any segregation statute. In 1885, however, Indian children were again singled out for segregation, together with children of "Chinese, Japanese, or Mongolian parentage." Children of Mexican descent were never segregated by statute in public schools, but "permissive" segregation was common, especially in Southern California. That practice was challenged in Federal Court in 1947 and was ruled unconstitutional. The 1885 statute regarding Indian and Asian pupils also was declared invalid in the same action. Thus ended almost a century of statutory school segregation affecting one or more groups in California, just seven years before the famous U. S. Supreme Court Brown v. (Topeka, Ka.) Board of Education case in 1954.

1954: U. S. Supreme Court reversed "separate but equal" statute and doctrine enunciated by that Court in 1896 (Plessy v. Ferguson), and declared segregated schools are "inherently unequal." Documented evidence regarding harmful educational and psychological effects of segregation on children, developed by Dr. Kenneth Clark and other social scientists, was reviewed by the Court and played a part in the decision.

1962: The California State Board of Education adopted a policy declaration (p. 2) affirming its role in eliminating segregation in California schools.

1963: The State Board of Education adopted Administrative Code regulations which required that "responsible persons and agencies...shall exert all effort to avoid and eliminate segregation of children on account of race or color" - Section 2010. Section 2011 listed factors to be considered in establishing and maintaining attendance centers and practices for the purpose of avoiding segregation.

1963: The California State Supreme Court ruled that school districts have an "affirmative duty" to "take steps" to alleviate segregation. Then Chief Justice Gibson stated, in dicta, "Residential segregation is in itself an evil...where segregation exists it is not enough for a school board to refrain from affirmative discriminating conduct.... The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in the schools regardless of cause."

In this decision, the Court took note of the fact that the State Board of Education had already established policy direction consistent with the findings in this case (Jackson v. Pasadena U.S.D.). Later in a case involving restrictions against bus transportation for pupils in desegregating school districts, the Court reaffirmed the "affirmative duty" doctrine and struck down the "anti-busing" statute as it applied to desegregation (1970).

1966: The first statewide racial and ethnic survey of pupils and school staff documented substantial segregation in both groups.

1967: At the direction of the State Board of Education, the State Superintendent issued a memorandum to all school superintendents which informed them of their responsibility to take "reasonably affirmative steps" to prevent segregation, correcting information to the contrary received "from county counsels and other sources." It stated the legal authority and duty to take corrective action does not mean the adoption of any particular plan or method. "What is reasonable," it stated, "depends on circumstances in each individual school district."

1968: The State Board of Education's Advisory Commission on Equality of Educational Opportunity, in a major report, informed the State Board that its 1963 Title 5 regulations, court decisions upholding desegregation, and Department of Education advice and assistance to school districts were not effective in preventing and eliminating segregation. Racial and ethnic survey data in 1967 and 1968 indicated an increase in segregation. The report recommended that the Board schedule hearings promptly for the purpose of strengthening its regulations. Further actions were recommended to establish affirmative practices and programs to increase the number and distribution of minority school staff, and to increase support of other programs and services affecting equality of educational opportunity.

1968: Assemblyman William Bagley (R. San Rafael) introduced legislation which stated "segregation of students creates educational problems in the schools" and proposed a program of financial grants to districts to "develop, implement, and evaluate programs that provide integrated education for students...." A similar bill was introduced in 1969; neither bill was seriously opposed but they were not adopted due primarily to lack of budget commitment by the Executive Branch.

1969: The State Board of Education adopted strengthened regulations. In addition to provisions similar to the previous regulations, the new ones (Sections 14020-21, Administrative Code, Title 5) required "high priority in all decisions relating to school sites, attendance areas, and practices," authorized periodic racial and ethnic surveys, established a percentage range which compared schools of differing racial and ethnic composition, and required a district to "study and consider possible alternative plans." Feasibility factors affecting such a study and possible alternative plans were also included in order to provide districts with additional guidance in local planning. A procedures manual and guidelines were developed for the Department of Education by the Bureau of Intergroup Relations and distributed to all affected districts to assist them in the implementation of the regulations. Technical and advisory services were provided to requesting districts. Some reduction was noted in the number of segregated schools in the next survey.

1970: The State Board of Education rescinded Sections 14020-21 under emergency provisions, citing reference to the regulations in a court decision requiring desegregation of the Los Angeles Unified School District. The State Board declared that it did not intend that the regulations be used by courts as "ironclad rules of law."

1970: The regulations were reinstated by the Sacramento County Superior Court which ruled that an emergency did not exist which compelled the repeal action.

The Attorney General, as counsel for the Board, did not appeal or otherwise contest the decision, thus leaving the regulations in effect.

1970: Assemblyman William Bagley introduced a bill with essentially the same text as the repealed regulations.

1972: The Bagley bill introduced in 1970 was passed in late 1971, becoming effective March 1, 1972. The law (Education Code Sections 5002-3) required school district adoption and implementation of plans to prevent and eliminate racial/ethnic imbalance involving schools which differed significantly in racial/ethnic composition from the district average. It required the Department to obtain plans from districts and to accept or reject them on the basis of State Board of Education regulations. Feasibility factors affecting planning and implementation were established to recognize unusual educational and other situations. The Department prepared tentative new regulations for adoption by the State Board as required by the law.

1972: Proposition 21 (November general election) was adopted by voters. It prohibited the assignment of pupils to schools on the basis of race, creed, color; it also repealed State Board regulations and Bagley Act.

1973: The Federal Emergency School Aid Act became effective to assist desegregating school districts; allocated approximately \$19 million to California in 1973-74 and \$23 million in 1974-75. These funds could have supported educational and other program needs arising from an orderly approach to the desegregation process which the Bagley Act required, but without state direction or leadership the impact has been diminished and eligibility for funds reduced.

1974: The State Board of Education adopted regulations governing categorical aid programs which require, "No program utilizing categorical aid funds shall sanction, perpetuate, or promote segregation of students on the basis of race, ethnicity, religion, sex, or socioeconomic status." (Section 3935, Administrative Code, Title 5)

1975: The California State Supreme Court declared school assignment portion of Proposition 21 unconstitutional, and stated that State Board regulations and Bagley Act were constitutional, but voters had a right to repeal them. The Court restated that school districts are constitutionally responsible for local action to eliminate and prevent segregation. The decision did not preclude the State Board or Legislature from further involvement to support and guide local school districts.

APPENDIX B

Patterns and Consequences of Segregation

The racial and ethnic segregation and isolation of pupils in the public schools in California is extensive and statewide. Whether in urban or rural areas, in large districts or small, or in high or low wealth sections of the state, the most recent state and federal racial and ethnic surveys have demonstrated that the quantitative dimensions of segregation have diminished only slightly since the first state survey in 1966. The recent report of the U. S. Commission on Civil Rights "Twenty Years After Brown: Equality of Educational Opportunity" provides data by which some comparisons can be made of the intensity of segregation in California in contrast to the nation and to various regions.

Percent of Black pupils in schools of 50% or more total minority enrollment

Continental U. S.	- 63.7
South (11 "Deep South" states)	- 51.7
California	- 74.0

While Spanish-surnamed pupils are highly segregated in minority schools, the concentration is less than for Black pupils.

Percent of Spanish-surnamed pupils in schools 50% or more total minority

Continental U. S.	- 66.5
Southwest (including California)	- 56.2
California	- 45.0

In 1973, (the most recent survey by the Department of Education) 34% of all Black pupils attended schools that were 90% or more Black and a third of all Spanish-surnamed pupils were in schools that were 50% or more Spanish-surnamed. However, the Anglo majority group was the most isolated with 42% of the Anglos enrolled in 90-100% Anglo schools.

That segregation, however caused or perpetuated, is harmful to the children who are segregated has been stated by the courts and demonstrated over a long period of time. Unless the circle of discrimination, segregation, poor education, and low status is broken, the minority child in a minority segregated school has little chance to acquire all the skills and competencies necessary for the development of effective citizenship and positive self-concept. A minority segregated school is almost invariably considered inferior. In such an environment, it becomes next to impossible to maintain standards, morale, and expectations. Just as important, majority group children in a school which is composed of children of only that group, have little opportunity to test an assumption of advantage and privilege. Such isolation from others of diverse racial and ethnic backgrounds reinforces feelings of superiority and dominant attitudes. Clearly, the goals of quality integrated education as defined by the Commission cannot be achieved in schools that do not provide the essential characteristics for achieving those goals.

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There are those who advise approaches other than the desegregation/integration process to ameliorate the harmful consequences of segregation. Programs and activities such as bilingual instructional methods, compensatory education, and multicultural activities and the like have been suggested as substitutes for desegregation. These programs are highly desirable and necessary and should be maintained at a high level throughout the state. Rather than a substitute for desegregation, we believe these programs should be considered as important supports in the process of establishing quality integrated education.

As noted earlier, the U. S. Supreme Court and the California Supreme Court have consistently ruled that racial and ethnic segregation must be eliminated because its harmful consequences deny equal protection of the laws. The latest ruling of the California Supreme Court in the Santa Barbara-Proposition 21 case forcibly underscored this position. The U. S. Supreme Court recently has refused to review the appeals of the Louisville, Ky., Indianapolis, Ind., and Boston, Mass. school districts, therefore reinforcing the district court orders to develop and implement desegregation plans.

Such trials and appeals are costly and it is the premise of this report that aggrieved persons should not have to resort to such measures since the courts have steadfastly upheld the "harm" of segregation and the benefits of integration. In urging that school agencies and responsible institutions take "affirmative" measures to "root out" segregation, the Commission recognizes a positive role for the State Board of Education and State Department of Education to avert repeated costly court confrontations between aggrieved persons and defending districts.

With the Court's decision that previous guidelines were repealed by the voters, with the courts' declaration of the harmful effects of segregation, and with the knowledge of its existence throughout the State, the Commission believes that the State Board must again seek ways to assist districts in their constitutional duty to prevent and eliminate segregation.